



# 捍衛法律保障 UPHOLDING LEGAL PROTECTION



## 公平公正

私隱公署檢視任何可能影響個人資料私隱的現行及擬議法例和政府政策，並密切留意海外與公署工作相關的資料保障法律發展情況。公署亦提供法律協助計劃，以及跟進有關私隱專員決定的法庭或行政上訴委員會的聆訊。

## FAIRNESS AND EQUITY

PCPD reviews existing and proposed legislation and government policies that may affect the privacy of individuals with respect to personal data. PCPD monitors developments in overseas data protection laws that are relevant to PCPD's work. PCPD also provides the Legal Assistance Scheme, and follows upon the hearings on Privacy Commissioner's decisions before the courts or the Administrative Appeals Board.





## 審視及更新《私隱條例》的建議

### 審視的需要

私隱專員有法定責任不時審視《私隱條例》。雖然《私隱條例》是科技中立及以原則性為本，惟在全球私隱發展的大前提下，時刻確保資訊科技發展與私隱保障取得適當平衡變得更加重要。

個人資料私隱的關注，由過往不當地收集個人資料、把個人資料用於直接促銷，到最近涉及網上平台的不當行為與資料保安，包括個人資料外洩、保安漏洞引致的黑客攻擊及在網上平台非法披露他人的個人資料。2018年發生了多宗資料外洩事故，及至2019年出現個人資料被「武器化」所造成的「起底」事件，均引起公眾就《私隱條例》在這數碼年代能否有效保障個人資料私隱的關注。

### 私隱專員的建議

私隱公署已於2019年6月向政府提交建議修訂《私隱條例》的研究報告，並已考慮以下主要因素為大前提：

- (i) 修訂的合法目的；
- (ii) 修訂的逼切性；
- (iii) 建議的修訂與達致合法目的是否符合相稱性；
- (iv) 除修訂《私隱條例》外，有否其他實際及有效的方法解決所面對的問題；
- (v) 保障資料私隱法律的環球趨勢；
- (vi) 本地的情況；
- (vii) 所有持份者的利益；及
- (viii) 社會的整體利益。

## PROPOSALS FOR REVIEWING AND UPDATING THE PDPO

### The need for review

The Privacy Commissioner has a statutory obligation to review the PDPO from time to time. Although the PDPO is principle-based and technology-neutral, it is important to review the effectiveness of implementation of the PDPO in order to keep up with the global privacy developments; and to strike a balance between the ICT development and personal data privacy protection.

Personal data privacy concerns have shifted from improper collection or misuse of personal data in direct marketing in the past, to irregularities related to online platforms and data security, such as personal data breaches, hacker attacks resulting from security loopholes and unlawful disclosure of personal data of others on online platforms. The spate of major personal data breach incidents that happened in 2018; as well as the “weaponisation” of personal data which led to doxxing incidents in 2019 have raised public concerns as to the adequacy of the PDPO in protecting personal data privacy in this digital era.

### The Privacy Commissioner’s proposal

In June 2019, PCPD submitted to the Government a report containing the recommendation to amend the PDPO, having regard to the following imperative factors:

- (i) the legitimate purpose of the reform;
- (ii) the pressing need for the reform;
- (iii) the proportionality between the proposed change and the pursuance of the legitimate purpose;
- (iv) whether there are any other practical and effective means to address the problem (other than amending the PDPO);
- (v) the global data privacy landscape;
- (vi) the local circumstances;
- (vii) the interest of all stakeholders; and
- (viii) the interest of the community at large.



此外，私隱公署亦因應自2019年中旬起出現的大量「起底」事件，與政府就進一步修訂《私隱條例》交流意見及想法。公署建議的修訂《私隱條例》方向與政府於2020年1月20日在立法會政制事務委員會會議中所闡述的方向屬一致。修訂方向包括相關的涵蓋範圍（如「個人資料」的定義及直接規管資料處理者）、程序（如賦予私隱專員權力來處理「起底」的罪行）、阻嚇力（如建立強制資料外洩通報機制、賦予私隱專員判處行政罰款的權力及增加違反《私隱條例》刑事條文的最高罰款額）及優化個人的權利（如要求機構性資料使用者提供資料保留政策及就個人資料訂明最長的保存期限）。

### 保障個人資料

由保障個人資料私隱的角度看來，當網民將其他人的個人資料上載至社交平台，他們應考慮收集的方法是否合法及公平、披露他人的個人資料時若與當初收集的目的並不相同，應先根據保障資料原則取得有關人士的同意等。

### 將個人資料「武器化」

網絡欺凌極可能只屬違反資料保障原則，這與披露他人的個人資料的「起底」訊息截然不同；後者一般同時對個別的資料當事人帶有騷擾、威脅及恐嚇性。例如，某些討論區上的帖文煽動網民找尋某特定資料當事人的位置繼而威脅對他/她們採取非法行動。這些「起底」帖文的內容可引致資料當事人蒙受心理傷害並違反《私隱條例》第64(2)條的條文，構成刑事罪行。這正闡述了為何這類起底案件實際上是把個人資料「武器化」。

Subsequently, views were also exchanged with the Government on how the PDPO should be amended further in the wake of a large amount of doxxing incidents which occurred since mid-2019. PCPD's recommended directions for amendments to the PDPO are generally in line with that put forward by the Government in the meeting of the Panel on Constitutional Affairs of the Legislative Council on 20 January 2020. The proposed directions encompass issues relating to the scope (e.g. definition of personal data and direct regulation on data processors), the process (e.g. vesting enhanced powers with the Privacy Commissioner to deal with offences like "doxxing"), the deterrent effect (e.g. instituting a mandatory data breach notification system, empowering the Privacy Commissioner to administer administrative fines and increasing the maximum level of criminal fines) as well as enhancing the rights of individuals (e.g. requiring organisational data users for providing retention policy and maximum retention period for personal data).

### Protecting personal data

From the perspective of protection of personal data privacy, when netizens upload other individuals' personal data on social media platforms, they should consider whether the means of collection is lawful and fair, whether the disclosure of others' personal data has the requisite consent for a purpose different from the one for which it is collected, etc. under the DPPs.

### "Weaponisation" of personal data

Unlike cyber-bullying which may only lead to contravention of the DPPs, "doxxing" posts not only disclose an individual's personal data; but are usually coupled with harassing, threatening and intimidating messages targeted at the data subjects concerned. For instance, there were messages in discussion forum inciting others to locate the whereabouts of the data subjects concerned and threatening to carry out illegal actions against them. These "doxxing" posts containing elements which could result in psychological harm to the data subjects concerned might constitute a criminal offence under section 64(2) of the PDPO. That explains why this kind of doxxing cases is practically "weaponisation" of personal data.

## 在2019冠狀病毒病疫情中平衡私隱權和公眾利益

2019冠狀病毒病於超過200個國家和地區蔓延，全球受感染甚至死亡的人不計其數。在香港，2019冠狀病毒病已根據法例第599章《預防及控制疾病條例》被納入為其中一種須呈報的傳染病，並允許政府對受感染人士及其密切接觸者施以強制性的隔離令。

### 私隱權並非絕對的權利

個人資料在抵抗病毒蔓延過程中至關重要，當中包括健康資料的處理、預測病毒的傳播路徑、監察家居隔離人士的位置及追蹤接觸者等。私隱權受《基本法》第三十條保障，並受《香港人權法案條例》(第383章)第II部第8條之下的第十四條(即節錄自《公民權利和政治權利國際公約》第十七條第一款的內容)的普遍保障。

私隱權與生存的權利不同；根據聯合國人權委員會的一般性評論(於2018年11月發布)，生存的權利是一項至高無上的權利，較其他所有人權為先。私隱權並非絕對的權利，而是受到限制的。《公民權利和政治權利國際公約》第四條第一款規定，「在社會緊急狀態威脅到國家的生命並經正式宣佈時，本公約締約國得採取措施克減其在本公約下所承擔的義務，但克減的程度以緊急情勢所嚴格需要者為限。」《香港人權法案條例》第5條亦有類似的規定。

在危及生命安全的病毒蔓延期間，肯定比保障私隱更為重要。根據《私隱條例》第59(1)條，當個人資料的使用與保障資料當事人或任何其他人的健康有關，而若遵從《私隱條例》附表一的保障資料第3原則(資料的使用)的管限會對資料當事人或任何其他人的健康造成嚴重損害，該個人資料的使用可能獲豁免而不受此管限。換句話說，如能展示使用資料是出於保障個人及整體公共衛生，即使因未經同意而使用相關資料而出現違規的情況，亦可能得以免責。而《私隱條例》第59(2)條更指出，在相當可能會對資料當事人或任何其他人的身體或精神健康造成嚴重損害的情況下，資料使用者可毋須得到資料當事人的同意而向第三者披露關乎某資料當事人的身分或位置的個人資料。

## BALANCING PRIVACY RIGHT AND PUBLIC INTEREST IN THE COVID-19 PANDEMIC

The COVID-19 pandemic has spread over 200 countries and territories, resulting in tens of thousands of infection and death cases worldwide. In Hong Kong, COVID-19 had been added as one of the notifiable infectious diseases under the Prevention and Control of Disease Ordinance (Cap 599) whereby the Government has been empowered to impose compulsory quarantine requirements on the infected people as well as their close contacts.

### Privacy right is not absolute

Personal data have played an important role in combating the pandemic, such as processing of health data, predicting the trajectory of the spread of the virus, monitoring whereabouts of home confinees and contact tracing. Privacy right is a fundamental human right and is guaranteed by Article 30 of the Basic Law and protected generally under Article 14, section 8, Part II of the Hong Kong Bill of Rights Ordinance (Cap 383) ("BORO"). The latter is a mirror image of Article 17(1) of the International Covenant on Civil and Political Rights ("ICCPR").

Unlike the right to life, which according to the General Comments of the Human Rights Committee of the United Nations (published in November 2018) is a supreme right and a pre-requisite for the enjoyment of all other human rights, privacy right is not absolute but subject to restrictions. Article 4(1) of the ICCPR provides that "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation". Similar provisions are also found in section 5 of the BORO.

In times of a life-threatening pandemic, privacy right comes second to protecting public health. Section 59(1) of the PDPO provides for situations where the use of personal data relating to the health of the data subjects may be exempted from the application of DPP3 (use of data) if the application of such rule would cause serious harm to the health of the data subjects or any other individuals. In other words, any breach of the general rule on the use of data without consent may be defended by demonstrating that the use of the data is for protecting the health of individuals and public health at large. In particular, section 59(2) of the PDPO states that in circumstances where the application of the restrictions on the use of data would be likely to cause serious harm to the physical or mental health of the data subjects or any other individuals, personal data relating to the identity or location of the data subjects may be disclosed to a third party without the consent of the data subjects.





另一方面，根據《私隱條例》第60B條，如個人資料是由任何成文法則、法律規則所規定或授權使用的，該資料獲豁免而不受保障資料第3原則的條文所管限。根據《預防及控制疾病規例》第4條（第599A章），如任何醫生有理由懷疑有屬表列內的傳染病個案，他須立即通知衛生署署長。因此，有關醫護人員可引用《私隱條例》第60B條，毋須事先取得資料當事人的同意而向衛生署署長披露關乎某資料當事人的個人資料，以符合《預防及控制疾病規例》（第599A章）的要求，也切合公眾健康及公共利益的目的。同樣地，《預防及控制疾病（披露資料）規例》（第599D章）第3(1)條訂明如衛生主任合理地相信(a)某人知道、管有或控制任何資料；及(b)該資料攸關處理公共衛生緊急事態，則該衛生主任可要求該人提供該資料。因此，任何人如按照衛生主任的要求提供資料當事人的個人資料，該資料將獲豁免而不受保障資料第3原則的條文所管限。

### 合乎比例、透明度和可解釋性

雖然私隱權是一項有限制的權利，但根據《香港人權法案條例》第5條的規定，對這項基本人權的減免，只限於「在此種危急情勢絕對必要之限度內」。換言之，採取屬侵擾私隱的所有措施必需是為了達至合法目的而言是必要的，也是合乎適度的。終審法院在希慎興業有限公司訴城市規劃委員會一案(2016) 19 HKCFAR 372修訂了合乎適度的測試，規定公共機構須決定(i)侵擾性措施是否追求合法目的；(ii)若是，是否與推展該目的有合理關連；(iii)該措施是否不超乎該目的所需；及(iv)是否已在該措施帶來的社會利益與憲法保障的個人權利之間取得合理平衡，尤其是對社會利益的追求是否導致個人承擔過於嚴苛的負擔。

私隱專員已向多個政府部門，包括政府資訊科技總監辦公室、政策創新與統籌辦事處、衛生署及入境事務處等，就各部門抵抗2019冠狀病毒病，例如實施隔離及追蹤受感染人士及其緊密接觸者的所在等措施提供意見。當然，這些是在保障私隱和公眾健康之間取得適當平衡的經典例子，私隱專員亦強調政府仍須遵守其他保障個人資料的原則，包括收集最少量的資料、資料保留期不應超過實際所需，以及禁止未獲授權的披露，或遺失所收集和保存的個人資料。

Section 60B of the PDPO further exempts the use of personal data from the application of DPP3 when the use is required or authorised by or under any enactment. According to section 4 of the Prevention and Control of Disease Regulation (Cap 599A), if any medical practitioner has reason to suspect a case of a scheduled infectious disease, he must immediately notify the Director of Health. Therefore, relevant medical practitioners may rely on section 60B of the PDPO to disclose the personal data of a data subject to the Director of Health without obtaining the prior consent of the data subject, in order to comply with the requirements of the Prevention and Control of Disease Regulation (Cap 599A) as well as for the purpose of protecting public health and public interest. Similarly, section 3(1) of the Prevention and Control of Disease (Disclosure of Information) Regulation (Cap 599D) provides that a health officer may require a person to give any information that the health officer reasonably believes (a) is within the knowledge, in the possession or under the control of the person; and (b) is relevant to the handling of the public health emergency. Hence, any person providing personal data of a data subject pursuant to a request of a health officer would be exempt from the application of DPP3.

### Proportionality, transparency and explainability

Although privacy is a qualified right, derogation from this fundamental human right shall only be “to the extent strictly required by the exigencies of the situation” as required by section 5 of the BORO. In other words, all privacy-intrusive measures shall be necessary for and proportionate to the legitimate purpose they seek to achieve. The Court of Final Appeal in *Hysan Development Company Limited v Town Planning Board* (2016) 19 HKCFAR 372 amended the proportionality test whereby public authorities would have to decide (i) whether the intrusive measure pursues a legitimate aim; (ii) if so, whether it is rationally connected with advancing that aim; (iii) whether the measure is no more than necessary for that purpose; and (iv) whether a reasonable balance has been struck between the societal benefits of the encroachment and the inroads made into the constitutionally protected rights of the individual, in that these measures or decisions do not, in all the circumstances of this case, impose an unacceptable harsh burden on the impacted individuals.

The Privacy Commissioner has since provided his observations to various government departments and/or bureaux including the Office of the Government Chief Information Officer, the Policy Innovation and Co-ordination Office, the Department of Health and the Immigration Department regarding their measures in combatting COVID-19, such as enforcing quarantine and tracing the whereabouts of the infected and their close contacts. While these are classic examples of demonstrating proportionality after striking a proper balance between privacy protection and public health, the Privacy Commissioner stresses that the Government shall comply with other personal data protection principles including minimum data collection, retention of which should not be longer than necessary and no unauthorised disclosure or loss of the personal data collected and kept.

我們毋須在個人資料私隱和保障及公眾衛生之間作出取捨。數據道德管理價值和模式可以幫助我們同時達成兩個目標。尊重、互惠及公平為其中的關鍵。為了消除疑慮和建立信任，機構應該對建議的措施保持透明度和能夠解釋該等措施，說明會否收集個人資料，以及會收集哪些個人資料，如何使用、分享和轉移個人資料，以及在對抗病毒時採取何種資料保護措施。無論如何，我們應該經常採取對私隱較少侵害的措施（例如以匿名或隱藏身分的方式處理資料）。

### 私隱公署就公眾諮詢所提交的意見書

本年度私隱專員就以下公眾諮詢提交保障個人資料私隱的意見：

We do not need to commit to a trade-off between privacy and data protection from one side, and public health, on the other. Data ethics and accountability can help us achieve both at the same time. Being respectful, beneficial and fair are the key values. In order to dispel doubts and build trust, organisations should be transparent about and be able to explain the proposed measures, spelling out whether and what personal data will be collected, how the personal data will be used, shared and transferred, as well as adopting the kinds of data security measures in combating the virus. Less privacy-intrusive measures (such as handling data in an anonymised or de-identified way) shall always be preferred.

### SUBMISSIONS MADE IN RESPECT OF PUBLIC CONSULTATIONS

During the reporting period, the Privacy Commissioner provided views on personal data privacy protection in response to the following public consultations :

徵詢意見的部門 Consulting Organisation	諮詢文件 Consultation Paper
律政司 Department of Justice	《2018年外國判決承認和執行公約草案》第2號諮詢文件 Consultation Paper No.2 on 2018 Draft Convention on the Recognition and Enforcement of Foreign Judgments
香港法律改革委員會 The Law Reform Commission of Hong Kong	《檔案法》的諮詢文件 Consultation Paper on Archives Law <hr/> 《公開資料》的諮詢文件 Consultation Paper on Access to Information <hr/> 《導致或任由兒童或易受傷害成年人死亡或受到嚴重傷害個案》的諮詢文件 Consultation Paper on Causing or Allowing the Death or Serious Harm of a Child or Vulnerable Adult
保險業監管局 Insurance Authority	有關《持牌保險代理人操守守則》草擬本的諮詢文件 Consultation Paper on the Draft Code of Conduct for Licensed Insurance Agents <hr/> 有關《持牌保險經紀操守守則》草擬本的諮詢文件 Consultation Paper on the Draft Code of Conduct for Licensed Insurance Brokers



## 私隱公署對建議中的法例及行政措施所作的評論

本年度私隱專員就以下的立法建議和行政措施建議提出意見：

## COMMENTS MADE ON PROPOSED LEGISLATION AND ADMINISTRATIVE MEASURES

During the reporting year, the Privacy Commissioner provided comments on the following proposed legislation and administrative measures:

機構 Organisation	建議的法例 / 行政措施 Proposed legislation/administrative measures
土木工程拓展署 Civil Engineering and Development Department	將軍澳 – 藍田隧道收費系統的私隱影響評估報告 (隧道服務供應商營運 – 帳戶管理和客戶服務) Privacy Impact Assessment Report for Toll Collection System for Tseung Kwan O – Lam Tin Tunnel (Toll Services Provider Operations – Account Management and Customer Services)
	有關在東涌新市鎮擴展 (東) 的實時交通管理系統的使用者要求 – 設計和施工評估報告 Review Report (Draft) on User Requirements for Real-Time Traffic Management System in Tung Chung New Town Extension (East) – Design and Construction
	在主要幹道上安裝交通探測器 – 系統設計的私隱影響評估報告 Privacy Impact Assessment Report – System Design – Installation of Traffic Detectors on Selected Strategic Routes
	使用人面識別系統辨別核准工人 Use of Facial Recognition System to Identify Certified Workers
商務及經濟發展局 Commerce and Economic Development Bureau	建議實施的數碼地面電視援助計劃之個人資料私隱相關的事宜 Request for Comment on Digital Terrestrial Television Assistance Programme
政制及內地事務局 Constitutional and Mainland Affairs Bureau	《2019年選舉法例 (雜項修訂) 條例草案》 Electoral Legislation (Miscellaneous Amendments) Bill 2019
懲教署 Correctional Services Department	於大潭峽懲教所安裝 (1) 在囚人士「影像分析及監察系統」及 (2) 在囚人士「移動及位置監察系統」的私隱影響評估 Privacy Impact Assessments on (1) "Video Analytic Monitoring System"; and (2) "Movement and Location Tracking System" in Tai Tam Gap Correctional Institution
衛生署 Department of Health	智能發燒偵測系統計劃 The Smart Fever Screening System Project
	在《預防及控制疾病規例》(第599A章) 下要求接受家居檢疫人士配戴定位裝置 Requiring Location Device to be Worn by Home Confinees under Prevention and Control of Disease Regulation (Cap 599A)
發展局 Development Bureau	以視頻分析科技執行有關道路交通罪行之準備工作的私隱影響評估報告 Privacy Impact Assessment Report on Preparatory Work for Traffic Offence Enforcement by Video Analytic Technology



機構 Organisation	建議的法例 / 行政措施 Proposed legislation/administrative measures
教育局 Education Bureau	<p>建議對教育局數據庫內註冊教師的資料與死亡登記冊內所載的資料作定期比對可能引起的私隱議題</p> <p>Data Privacy Concerns Arising from Conducting a Regular Check of Registered Deaths Records against Database of Education Bureau</p>
選舉管理委員會 Electoral Affairs Commission	<p>選舉指引草擬</p> <p>Draft Guidelines on Election</p> <hr/> <p>移除放置在投票站內發票櫃枱上的紙板</p> <p>Removal of Cardboards Placed on Ballot Paper Issuing Desks inside Polling Stations</p>
環境保護署 Environmental Protection Department	<p>建議與其他政府部門分享及准予存取有關非法堆填及廢物棄置的監察錄影片段</p> <p>Proposed Sharing of and Authorising Access to Surveillance Video Footages Capturing of Illegal Land Filling and Dumping of Wastes among other Government Departments</p> <hr/> <p>建議透露被定罪個案的資料</p> <p>Proposed Disclosure of Conviction Data of the Environmental Protection Department</p>
食物環境衛生署 Food and Environmental Hygiene Department	<p>建議為根據《食品安全條例》獲豁免註冊的食物進口商和食物分銷商發行登記冊</p> <p>Proposed Publishing of a Register for Food Importers/Food Distributors who are Exempted from Registration under the Food Safety Ordinance</p> <hr/> <p>私隱影響評估 – 在沿海地帶安裝 360 度相機作為監察海岸垃圾及清潔承辦商的工作表現</p> <p>Privacy Impact Assessment – Installation of 360 degrees cameras in Selected Coastal Areas for Monitoring Marine Refuse and Performance of Cleansing Contractor</p> <hr/> <p>使用無人駕駛飛機在沿海地帶監察被沖上岸邊的海岸垃圾之累積情況及清潔承辦商的工作表現</p> <p>Use of Unmanned Aircraft Vehicles for Monitoring Accumulation of Marine Refuse Washed Ashore in Selected Coastal Areas and Performance of Cleansing Contractor</p>
民政事務總署 Home Affairs Department	<p>建議於屯門區議會會議室內外及屯門政府合署示威區設置閉路電視</p> <p>Proposed Installation of CCTVs inside and outside the Conference Room of the Tuen Mun District Council and in the Demonstration Areas of the Tuen Mun Government Offices</p> <hr/> <p>有關《前旺角行人專用區閉路電視系統操作指引》的草擬文本的意見</p> <p>Revised Operational Guidelines for CCTV Systems Overseeing former Mong Kok Pedestrian Precinct</p>



機構 Organisation	建議的法例 / 行政措施 Proposed legislation/administrative measures
入境事務處 Immigration Department	<p>新一代智能護照系統(第二階段)的私隱影響評估 Next Generation Electronic Passport System – Privacy Impact Assessment for Phase 2 Production Rollout</p> <hr/> <p>新一代智能身份證系統的私隱影響評估 Privacy Impact Assessment on the Implementation of the Next Generation Smart Identity Card System</p>
地政總署 Lands Department	<p>在公共領域披露租戶名稱的私隱議題 Data Privacy Concerns Arising from Disclosure of Tenants' Names in Public Domain</p> <hr/> <p>使用數碼計時器記錄員工出勤的私隱議題 Privacy Issue on Using Digital Time Recorder for Taking Staff Attendance</p>
康樂及文化事務署 Leisure and Cultural Services Department	<p>建議城市售票網以實名制方式出售門票可能涉及檢查及登記個人資料的安排 Proposal of Real-name Registration Arrangement involving Inspection and Registration of Personal Data of Patrons Using URBIX Ticketing Services</p> <hr/> <p>在公共游泳池使用遇溺檢測系統 Use of Drowning Detection System at Public Swimming Pools</p>
政府資訊科技總監辦公室 Office of the Government Chief Information Officer	<p>「多功能智慧燈柱」試驗計劃 – 資訊科技系統支援的私隱循規評估及私隱影響評估 Privacy Compliance Assessment and Privacy Impact Assessment on the IT Support System of the Pilot Multi-functional Smart Lampposts Scheme</p> <hr/> <p>由政府資訊科技總監辦公室籌辦的網上學習平台(網上購物課程) Web-based Learning Portal (Online Shopping Course) Organised by the OGCIO</p>

機構 Organisation	建議的法例 / 行政措施 Proposed legislation/administrative measures
運輸署 Transport Department	<p>研究增強在連道 / 樂活道視頻行人檢測及試驗自動交通測量系統的私隱影響評估 Privacy Impact Assessment Report – Study on Enhancement Works for the Video Pedestrian Detection System at Link Road/ Broadwood Road and Pilot Automatic Traffic Survey System</p> <hr/> <p>在的士車廂內自願安裝閉路電視系統的指引(擬稿) Revised Draft Guidelines on Voluntary Installation of Closed Circuit Television Systems inside Taxi Compartment</p> <hr/> <p>專線小巴實時資訊系統技術研究的私隱影響評估報告 Privacy Impact Assessment Report on Technical Study on Real-time Arrival Information for Green Minibus</p> <hr/> <p>「採購連管理、營運及維修新一代停車收費錶系統」合約的私隱影響評估 Privacy Impact Assessment – Contracts for Procurement cum Management, Operation and Maintenance of New Generation of Parking Meter System</p> <hr/> <p>改善運輸署一站式流動應用程式「香港出行易」的私隱影響評估 Privacy Impact Assessment – Enhancements on Transport Department’s All-in-one Mobile Application “HKeMobility”</p> <hr/> <p>建議在駕駛執照加入二維碼的私隱議題 Privacy Issues on Insertion of QR Code on Driving Licence</p> <hr/> <p>自動偵測事故解決方案的私隱影響評估報告 Privacy Impact Assessment Report regarding Implementation of Automatic Incident Detection (AID) solution</p> <hr/> <p>研究車內感應器設計和應用的私隱影響評估 Privacy Impact Assessment on Design and Application of In-Vehicle Units</p> <hr/> <p>有關智能交通燈系統先導計劃的私隱影響評估 Privacy Impact Assessment Report on Pilot Intelligent Traffic Signal System</p>



### 向行政上訴委員會提出的上訴

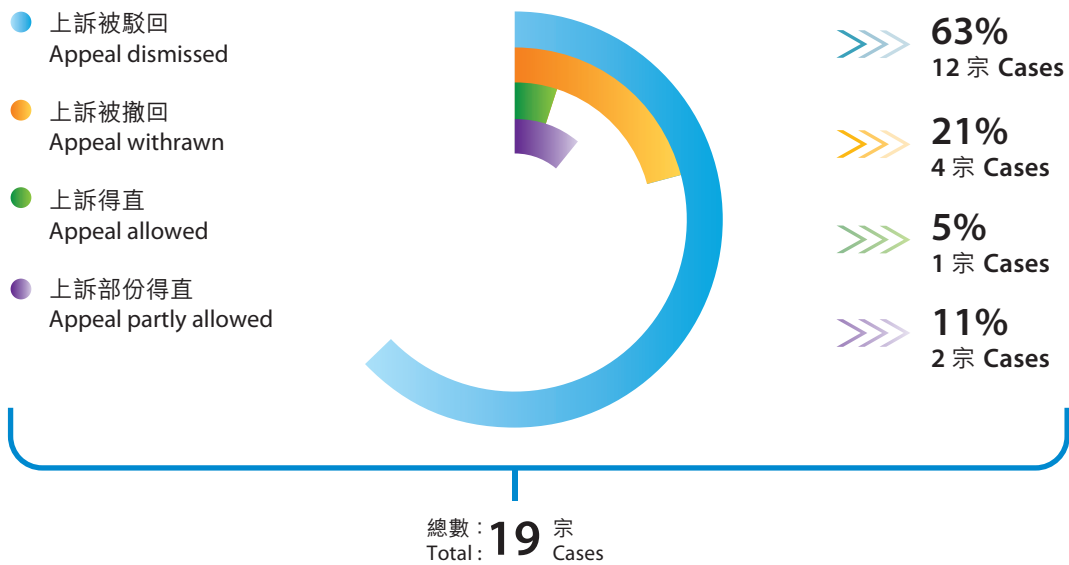
行政上訴委員會是根據《行政上訴委員會條例》(第442章)而設立的法定組織，負責聆訊投訴人或投訴的資料使用者對私隱專員的決定而提出的上訴，並作出裁決。在報告年度內的有關上訴數字及部分選取的個案簡述列於下文。

### 在報告年度已完結的行政上訴案件的統計資料

本報告年度共有 19 宗上訴個案完結。

除三宗上訴案件之外，其餘 16 宗已完結的上訴案件最終都被委員會駁回或由上訴人自行撤回。(圖 1.1)

圖 1.1 – 上訴的結果



### APPEALS LODGED WITH THE ADMINISTRATIVE APPEALS BOARD

The Administrative Appeals Board (AAB), established under the Administrative Appeals Board Ordinance (Cap 442), is the statutory body that hears and determines appeals against the Privacy Commissioner's decisions by complainants, or by relevant data users being complained of. The statistics and some notable case notes during the reporting year are found in the ensuing paragraphs.

### Statistics of AAB cases concluded in the reporting year

A total of 19 appeals were concluded during the reporting year.

Except for three appeal cases, the remaining 16 appeal cases were eventually dismissed by the AAB or withdrawn by the appellants. (Figure 1.1)

Figure 1.1 – Results of appeal cases

## 在報告年度新接獲的及仍在處理中的行政上訴案件的統計資料

在本報告年度新接獲的20宗上訴的個案當中，17宗是上訴私隱專員根據《私隱條例》第39(2)條不進行或終止正式調查的決定。私隱專員作出該等決定可基於(i)沒有表面證據支持指稱的違反行為；(ii)被投訴者已採取補救行動糾正所指稱的違反行為；(iii)投訴的主要事項與個人資料私隱無關；及/或(iv)有關投訴或直接有關的爭端目前或快將由其他規管或執法機構進行調查。

兩宗是上訴私隱專員在作出調查後不送達執行通知的決定。

一宗是上訴私隱專員在作出調查後送達執行通知的決定。(圖1.2)

圖 1.2 – 上訴所涉的性質

- 針對私隱專員決定不進行調查或終止調查的上訴  
Appeal against the Privacy Commissioner's decision not to carry out or terminate an investigation
- 針對私隱專員調查後決定不送達執行通知的上訴  
Appeal against the Privacy Commissioner's decision not to serve an Enforcement Notice after investigation
- 針對私隱專員調查後決定送達執行通知的上訴  
Appeal against the Privacy Commissioner's decision to serve an Enforcement Notice after investigation

總數：20 宗  
Total: 20 Cases

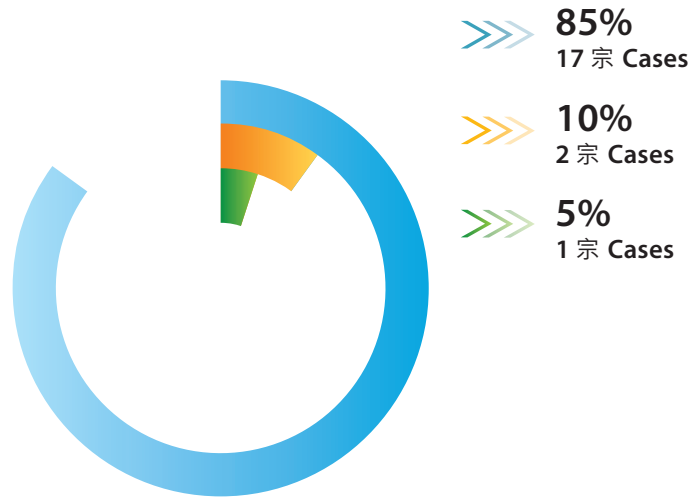
## Statistics of AAB cases newly received/under processing in the reporting year

Of the 20 appeal cases received in the reporting year, 17 appealed against the Privacy Commissioner's decision not to carry out or terminate an investigation under section 39(2) of the PDPO. The Privacy Commissioner made these decisions on the grounds that: (i) there was no *prima facie* evidence to support the alleged contravention; (ii) the party being complained against had taken remedial action to rectify the alleged contraventions; (iii) the primary subject matter of the complaint was considered not to be related to personal data privacy; and/or (iv) the complaint in question or a directly related dispute was currently or soon to be under investigation by another regulatory or law enforcing body.

Two appeals were against the Privacy Commissioner's decision not to serve an Enforcement Notice after investigation.

One appeal was against the Privacy Commissioner's decision to serve an Enforcement Notice after investigation. (Figure 1.2)

Figure 1.2 – Nature of the appeals





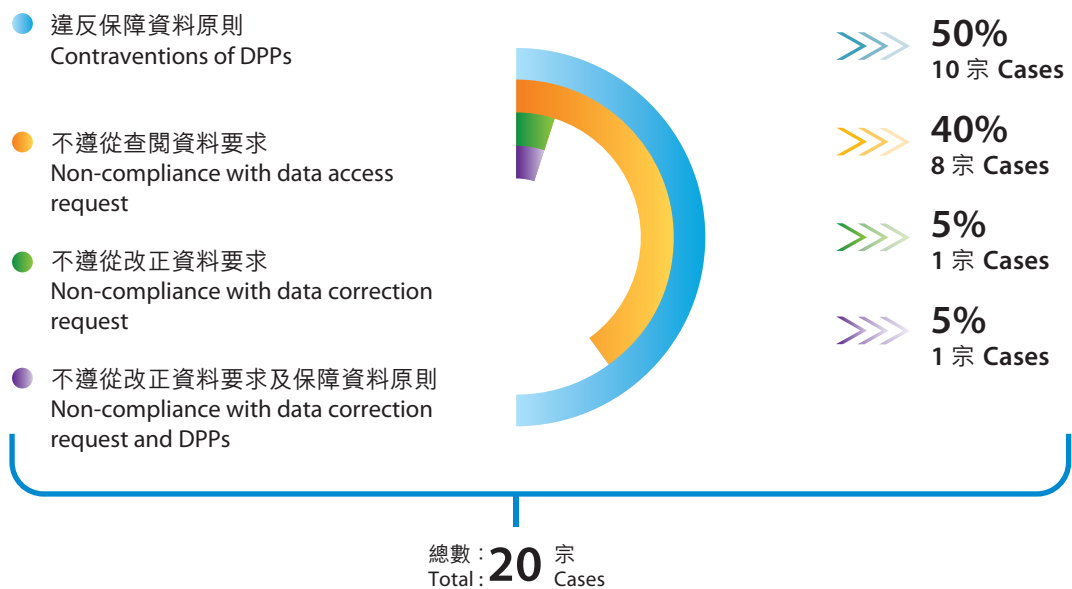


而在上述 20 宗新接獲的上訴個案當中，10 宗涉及指稱違反《私隱條例》的保障資料原則。八宗涉及指稱不遵從查閱資料要求、一宗涉及指稱不遵從改正資料要求，而其餘一宗則涉及同時指稱不遵從改正資料要求及保障資料原則。(圖 1.3)

Of these 20 appeal cases received, 10 cases involved alleged contraventions of the DPPs of the PDPO, eight cases involved alleged non-compliance with data access request(s), one case involved alleged non-compliance with data correction request(s) and the remaining one involved alleged non-compliance with both a data correction request and DPPs. (Figure 1.3)

圖 1.3 – 上訴所涉的《私隱條例》的規定

Figure 1.3 – The provisions of the PDPO involved in the appeals



有關指稱違反保障資料原則的上訴個案中（一宗個案可牽涉多於一項保障資料原則），四宗涉及超乎適度及/或不公平收集個人資料；三宗涉及個人資料的準確性及保留期間；六宗涉及未經資料當事人同意下使用及/或披露其個人資料；一宗涉及個人資料的保安及 10 宗涉及查閱個人資料。

Of those appeal cases involving the alleged contraventions of DPPs (one appeal might involve more than one DPP), four cases involved excessive and/or unfair collection of personal data; three cases involved accuracy and duration of retention of personal data; six cases involved the use and/or disclosure of personal data without the data subject's prior consent; one case involved security of personal data and 10 cases involved access to personal data.



### 上訴個案簡述一（行政上訴委員會上訴案件第 8/2018 號）

立法會議員 – 在立法會大樓內公眾地方執行通傳應變職務 – 政府確保法案及議案獲得通過涉及重大公眾利益（《基本法第 62 條》） – 被動地記錄立法會議員的行蹤不構成超乎適度或以不公平方式收集（保障資料第 1(1) 及 (2) 原則） – 通知的規定適用於自願性提供資料（保障資料第 1(3) 原則） – 向所有立法會議員傳達相關的政策和實務須具公開性和透明度（保障資料第 5 原則）。

聆訊委員會成員：林定國資深大律師（主席）  
陳錦文先生（委員）  
容慧慈女士（委員）

裁決理由書日期：2020 年 3 月 23 日

#### 投訴內容

上訴人是一名香港特別行政區的立法會議員。上訴人留意到為了確保政府的議案獲得通過，公職人員會記錄立法會議員在立法會大樓內的行蹤（「通傳應變職務」）。上訴人認為政府的做法違反多項條例下保障資料原則的規定。

### Appeal Case Note (1) (AAB Appeal No. 8 of 2018)

Legislative Council (LegCo) member – marshalling duties in the public areas of the LegCo Complex – vital public interest for the Government in ensuring the passing of bills and motions (Article 62, Basic Law) – no excessive or unfair collection for passive recording of the whereabouts of the LegCo members (DPP1(1), DPP1(2)) – notification requirement applies to consensual collection (DPP1(3)) – openness and transparency of the relevant policies and practices communicated to all LegCo members (DPP5).

Coram: Mr Paul LAM Ting-kwok, S.C. (Chairman)  
Mr CHAN Kam-man (Member)  
Ms Christine YUNG Wai-chi (Member)

Date of Decision : 23 March 2020

#### The Complaint

The Appellant was a member of the LegCo. The Appellant noticed that the public officers would record the whereabouts of the LegCo members in the LegCo Complex (“Marshalling Duties”) so as to ensure the Government’s motions could be passed. The Appellant believed that the acts of the Government contravened the requirements of the DPPs under the PDPO.



## 私隱專員的決定

根據條例第39(2)(d)條，私隱專員於2018年4月23日決定不對上訴人的投訴作進一步調查，是基於以下理由並無表面證據顯示通傳應變職務違反資料保障原則的任何規定：—

### 不違反保障資料第1原則

- 政府有責任促使立法會及時審議法案和議案，而通傳應變職務的目的是協助政府官員透過監督立法會的情況以履行該職責。這是一項正確和合法的目的。
- 由於公職人員僅在立法會大樓內的公眾地方觀察並記錄立法會議員的姓名和行蹤（這構成條例下各人士的「個人資料」），收集的方式既非不公平，亦不屬超乎適度。此外，保障資料第1(3)原則規定採取特定的步驟告知受影響的資料當事人（即立法會議員），私隱專員認為此原則不適用於以被動的觀察方式收集個人資料。

### 不違反保障資料第2原則

- 私隱專員並無發現任何資料顯示政府未有刪除收集到的個人資料。

### 不違反保障資料第3原則

- 使用資料與原有的收集目的一致，因為公職人員傳遞立法會議員行蹤的資料給相關政府各局/部門，在所有實質性時刻都是為了確保達到會議的法定人數。

### 不違反保障資料第4原則

- 沒有證據顯示政府政策局/部門未有遵循其既定的個人資料保安及資訊科技要求的準則。

## The Privacy Commissioner's Decision

On 23 April 2018, the Privacy Commissioner decided not to investigate the Appellant's complaint further under section 39(2)(d) of the PDPO as there was no *prima facie* evidence indicating that the Marshalling Duties contravened any requirements of the DPPs for the following reasons:—

### No breach of DPP1

- The Government was under a duty to procure the timely consideration of bills and motions by the LegCo and the purpose of the Marshalling Duties was to assist Government officials in monitoring the situation of the LegCo to discharge such duty. It was therefore a proper and lawful purpose.
- As public officers merely observed and recorded the names and the whereabouts of the LegCo members (which constituted respective "personal data" within the meaning of the PDPO) in the public areas of the LegCo Complex, the collection was neither unfair nor excessive. Further, such collection by way of passive observation would not trigger the application of DPP1(3), which required the taking of specified steps in informing the data subjects (i.e. the LegCo members) concerned.

### No breach of DPP2

- There was no information before the Privacy Commissioner that the Government had failed to delete the personal data collected.

### No breach of DPP3

- There was no change of use of the personal data against the original collection purpose as the information concerning the whereabouts of the LegCo members (passed by the public officers to the relevant Government bureaux/departments) was, at all material time, for securing the necessary quorum of the meeting.

### No breach of DPP4

- There was no evidence suggesting that the Government bureaux/departments had failed to follow their established guidelines on data security and IT requirements.

#### 不違反保障資料第5原則

- 私隱專員認為政府已透過律政司司長於2013年發佈的新聞稿，以及行政署於2017年向立法會行政管理委員會發出一系列信函，向立法會議員提供了資訊關於通傳應變職務的政策和實務。

#### 不違反保障資料第6原則

- 沒有證據顯示上訴人曾向任何政府政策局/部門提交其查閱資料要求。即使任何立法會議員提出了這樣的要求，私隱專員也合理地相信從通傳應變職務中收集到的個人資料，已被即時刪除。

上訴人不服私隱專員的決定，遂向委員會提出上訴。

### 上訴

委員會駁回了上訴人的上訴，並確認通傳應變職務並沒有違反任何一項保障資料原則。委員會認為立法會大樓內行蹤的資料，就履行《基本法》第62條下處理立法會議事的憲法責任，對政府而言是重要的，亦涉及重大的公眾利益。該決定的重點如下。

#### 條例的適用性

- 委員會認為公職人員執行通傳應變的職務涉及收集立法會議員的個人資料，因此受到條例所規管。收集的個人資料包括：(i) 個別立法會議員的姓名；及(ii) 他是否身在立法會大樓內某些公眾地方。這些都符合《私隱條例》第2條下「個人資料」的定義。

#### No breach of DPP5

- The Privacy Commissioner was satisfied that, by way of the press release issued by the Secretary for Justice in 2013 and the series of correspondences from the Administrative Wing to the Legislative Council Commission in 2017, the Government had already provided the relevant information to the LegCo members regarding the policies and practices of the Marshalling Duties.

#### No breach of DPP6

- There was no evidence suggesting that the Appellant had lodged a data access request with any of the Government bureaux/departments. Even if such a request had been made by any of the LegCo member, the Privacy Commissioner reasonably believed that the personal data collected by the Marshalling Duties would be erased immediately thereafter.

Dissatisfied with the Privacy Commissioner's decision, the Appellant lodged an appeal to the AAB.

### The Appeal

The AAB dismissed the appeal and affirmed the Marshalling Duties to be compliant with the DPPs. In particular, the AAB opined that the updated information of the whereabouts of the LegCo members in the LegCo Complex would be important for the Government to discharge its constitutional duty under Article 62 of the Basic Law ("BL") for matters transacted in the LegCo, which was a matter of important public interest. The gist of the decision is summarised below.

#### Applicability of the PDPO

- The AAB opined that performance of Marshalling Duties by public officers involved collection of personal data of LegCo members and hence was governed by the PDPO. The information collected, which included:– (i) the names of individual LegCo members; and (ii) whether they were in certain public areas of the LegCo Complex, constituted the meaning of "personal data" under section 2 of the PDPO.



#### 據稱違反保障資料第 1(1) 原則

- 委員會強調上述個人資料屬「基本必要」的訊息，用於確定立法會議員身在立法會大樓內公眾地方的行蹤，收集不屬超乎適度。此外，通傳應變職務讓政府能夠：(i) 獲取有關會議進度的一手資料；(ii) 監督投票的進行；及 (iii) 有效地掌握全體議員出席的情況，這最終達到政府履行其憲法責任的目的，即根據《基本法》第 62 條須確保通過法案或議案。收集的資料及有關行為是出自合法目的，與政府的職能直接相關並合乎重大的公眾利益。

#### 據稱違反保障資料第 1(2) 原則

- 委員會重申條例並沒有規定在收集資料當事人（即立法會議員）的個人資料之前，必須事先徵得他們的同意。委員會指，並沒有任何跡象（更遑論證據）顯示在立法會大樓的限制區域內執行通傳應變職務時，立法會議員的個人活動必須是保密的，不容他人觀察。委員會認為被動地記錄個別立法會議員在公眾地方的行蹤，並不涉及收集具敏感性的個人資料，這種做法並非不公平。

#### 據稱違反保障資料第 1(3) 原則

- 委員會不接納上訴人的指控，即根據保障資料第 1(3) 原則，在收集他的個人資料時或之前，他沒有獲告知關於收集的目的、受讓人類別等的資訊。委員會認為通知的規定，不適用於「非自願性」地提供資料，即本中公職人員被動地記錄立法會議員行蹤的情況。

#### *Alleged contravention of DPP1(1)*

- The AAB stressed that collection of the aforesaid personal data represented the “bare essential” information to ascertain the whereabouts of the LegCo members in the public areas within the LegCo Complex, which was not excessive. Further, the Marshalling Duties enabled the Government to:– (i) acquire first-hand information about the progress of the meeting; (ii) monitor the conduct of voting; and (iii) obtain a better grasp of members’ attendance as a whole, which ultimately served the legitimate purpose of the Government in discharging its constitutional duty to ensure the passing of a bill or motion under Article 62, BL. The act of collection and the data collected were for a lawful purpose directly related to the function of the Government in vital public interest.

#### *Alleged contravention of DPP1(2)*

- The AAB reiterated that there was no requirement under the PDPO requiring prior consent before collection of the personal data of the data subjects, i.e. the LegCo members. There was no suggestion, let alone evidence, that Marshalling Duties had been performed in restricted areas inside the LegCo Complex where the activities of individual LegCo members were meant to be kept confidential and not to be observed by others. The practice of passively recording the whereabouts of individual LegCo members in public areas with no sensitive personal information collected could not be unfair.

#### *Alleged contravention of DPP1(3)*

- The AAB also refused the Appellant’s allegation that he had received no notification regarding the purpose of the use of the personal data collected, the class of transferees etc. on or before collection of their personal data under DPP1(3). The AAB took the view that the notification requirement did not apply where public officers passively collected the whereabouts of LegCo members in a “non-consensual” manner.



### 據稱違反保障資料第2原則

- 委員會的結論是沒有任何資料或證據顯示政府未有遵從保障資料第2原則，即未有刪除已收集的個人資料，及/或在達到其目的後，保留資料超過所需的時間。相反地，政府確認在當天完成通傳應變的職務後，每天都會刪除收集到的資料。

### 據稱違反保障資料第5原則(及第6)原則

- 上訴人指政府沒有告知他有關通傳應變職務的政策及實務，違反了保障資料第5原則所訂須具公開性和透明度的規定。委員會不接納上訴人的指控，並認為第5原則並無要求須通知特定的人士。證據顯示在上訴人向私隱專員投訴之前，行政署已透過立法會行政管理委員會，多次向立法會議員提供了有關通傳應變職務的詳細訊息。
- 此外，委員會認為上訴人將保障資料第5及第6原則混為一談。無論如何，委員會認同私隱專員的調查結果，認為即使上訴人曾提出查閱資料要求，因鑒於政府每天刪除資料的政策，所要求的有關資料可能已不再存在，亦無法被查閱。

### 委員會的決定

委員會駁回本上訴。

梁嘉善大律師受屈漢驊事務所延聘代表上訴人應訊

莫樹聯資深大律師和孫靖乾資深大律師代表私隱專員應訊

梁衛民資深大律師由律政司延聘代表行政署署長(受約束人)

助理法律顧問盧志邦先生代表立法會秘書處(受約束人)

### Alleged contravention of DPP2

- The AAB concluded that there was no information or evidence substantiating the allegation that the Government had failed to comply with DPP2 by failing to erase the data and/or retaining the data collected for longer than was necessary after fulfilment of the purpose. To the contrary, the Government confirmed that the data collected would be erased on a daily basis upon completion of Marshalling Duties for that particular day.

### Alleged contravention of DPP5 (and DPP6)

- Regarding the Appellant's allegation that he had not been informed by the Government of the policies and practices regarding Marshalling Duties and that this was in breach of the requirement of openness and transparency, the AAB took the view that the principle was not about any notification to the individuals concerned. Evidence indicated that the Administration Wing had already provided detailed information on the Marshalling Duties on various occasions to LegCo members via the Legislative Council Commission prior to his complaint to the Privacy Commissioner.
- Besides, the AAB took the view that the Appellant could have conflated DPP5 and DPP6 (concerning data access requests). In any event, the AAB agreed to the Privacy Commissioner's findings and concluded that the requested data (even assuming the Appellant had lodged a data access request) could have no longer existed owing to the daily erasure policy of the Government and hence it could not have been accessed.

### The AAB's Decision

The appeal was dismissed.

*Ms Jessica LEUNG, barrister instructed by Messrs Wat & Co. for the Appellant*

*Mr Johnny MOK, S.C. and Mr Jenkin SUEN, S.C. for the Privacy Commissioner*

*Mr Raymond LEUNG, S.C. instructed by the Department of Justice for the Director for Administration (the Person bound by the decision)*

*Mr Bonny LOO, Assistant Legal Adviser for the Legislative Council Secretariat (the Person bound by the decision)*



## 上訴個案簡述二（行政上訴委員會上訴案件第 20/2018 號）

向一名個人提出詢問並不同提出查閱資料要求 – 提出查閱者的身份 – 《私隱條例》第 18 條 – 上訴人以瑣屑無聊或無理取鬧的方式處理案件可能需要向私隱專員付訟費及費用

聆訊委員會成員：馮庭碩資深大律師（主席）  
郭永聰先生（委員）  
曾慕秋先生（委員）

裁決理由書日期：2019 年 8 月 21 日

### 投訴內容

上訴人為香港巴哈伊總會（下稱「該總會」）的前成員。自 2010 年起，上訴人已向私隱專員提出合共 44 宗投訴（不包括本上訴），背後的原因皆源於同一事件 – 該總會收到一位 SL 小姐的投訴指上訴人的行為不當並有違巴哈伊信仰（下稱「該事件」），故此該總會取消了上訴人在該總會的成員身份及其所持有的「行政權利」。

於 2018 年 3 月 13 日，上訴人致函 SL 小姐，當中指稱是根據萊索托的巴哈伊總會（National Spiritual Assembly of the Baha'is of Lesotho）的要求，向 SL 小姐提出下列的查閱資料要求：—

- (i) 披露該名曾向該總會舉報該事件之「家庭成員」的姓名及聯絡資料；
- (ii) 解釋有關該事件是如何在 2008 年 9 月提交到該總會；及
- (iii) 提供該總會曾就該事件擬備的筆記、意見或評論。

（下稱「上訴人的查閱資料要求」）

由於 SL 小姐沒有就上訴人的查閱資料要求作出回應，故上訴人向私隱專員作出投訴。

## Appeal Case Note (2) (AAB Appeal No. 20 of 2018)

Making various enquires directed at a person does not necessarily equate to lodging data access requests (DARs) – identity of the person who lodged the DAR – section 18 of the PDPO – the Appellant conducting the appeal in a frivolous and vexatious manner may be liable to pay the costs of the Privacy Commissioner

Coram : Mr Eugene FUNG Ting-sek, S.C. (Chairman)  
Mr Ronald KWOK Wing-chung (Member)  
Mr TSANG Mo-chau (Member)

Date of Decision: 21 August 2019

### The Complaint

The Appellant was once a member of the Spiritual Assembly of the Baha'is of Hong Kong ("Assembly"). Prior to the present complaint, the Appellant had lodged a total of 44 complaints with the Privacy Commissioner since 2010 as a result of the very same incident – the Appellant's membership and "administrative rights" in the Baha'is faith had been removed for reason that he had behaved inappropriately, contrary to the Baha'is faith, towards Miss SL ("Incident").

In the present complaint, the Appellant issued a letter to Miss SL on 13 March 2018, on request of the National Spiritual Assembly of the Baha'is of Lesotho, requesting Miss SL to:–

- (i) reveal the name and full contact details of the "family friend" who had reported the Incident to the Assembly;
- (ii) explain how the Incident was referred to the Assembly in September 2008; and
- (iii) supply any related notes, observations or comments from the Assembly related to the Incident.

(collectively the "DAR")

As Miss SL did not reply to the DAR, the Appellant complained to the Privacy Commissioner.

## 私隱專員的決定

私隱專員決定根據《私隱條例》第39(2)(c)、39(2)(ca)及39(2)(d)條的酌情權，決定不繼續處理上訴人的投訴，所持理由如下：-

### 第一項資料 – 「家庭成員」的姓名及聯絡資料

《私隱條例》第18條訂明提出查閱資料要求的人士必須是資料當事人本身或代表資料當事人的「有關人士」。由於上訴人並非該「家庭成員」或該「家庭成員」的「有關人士」，故並沒有權提出關於第三者個人資料的查閱資料要求。換言之，上訴人並不能根據《私隱條例》提出有效的查閱資料要求。

### 第二及第三項資料 – 解釋有關該事件是如何提交到該總會及該總會擬備的書面記錄

上訴人由此至終都未能提供充份的表面證據，又或從其他途徑提供支持，從而顯示所要求的有關「解釋」或「書面記錄」確實存在。縱使假設有確實證據證明它們曾經存在，但沒有證據表明這些書面記錄在該事件發生後約10年仍然存在。

此外，私隱專員認為上訴人投訴的主要標的事宜與個人資料私隱的保障無關，一切只是源於該事件而引起。另外，上訴人曾經向私隱專員提出共44宗投訴（不包括本上訴），全部均被私隱專員根據《私隱條例》第39(2)條決定不繼續處理，而是次投訴亦不例外。私隱專員認為上訴人的投訴不是真誠作出的，屬瑣屑無聊或無理取鬧的投訴。

上訴人不滿私隱專員不繼續處理上訴人投訴的決定，故向委員會提出上訴。

## The Privacy Commissioner's Decision

The Privacy Commissioner exercised his discretion under sections 39(2)(c), 39(2)(ca) and 39(2)(d) of the PDPO not to further investigate the Appellant's complaint for the following reasons:-

### 1st category of requested information – name and full contact details of the "family friend"

Section 18(1) of the PDPO provides that a DAR must be lodged by the data subject himself or a "relevant person" acting on behalf of the data subject. Given that the Appellant was neither the individual who was the data subject (i.e. the "family friend") nor the relevant person acting on behalf of the "family friend", the Appellant did not have the *locus standi* to lodge a DAR concerning the personal data of a third party. In other words, the Appellant had not made a validly constituted DAR under the PDPO.

### 2nd and 3rd categories of requested information – explanation as to how the Incident was referred to the Assembly and documents from the Assembly

There was no *prima facie* evidence, whether demonstrated by the Appellant or otherwise, that the requested data (i.e. the "explanation" or "written records") ever existed in the first place. Even if there was positive evidence that they had existed, there was no evidence to establish that such written documents were still in existence about 10 years after the Incident.

Moreover, the Privacy Commissioner took the view that the subject matter of the complaint was unrelated to issues concerning protection of personal data privacy but arising out of the Incident. Besides, apart from the present complaint, all 44 prior complaints lodged by the Appellant were unable to be further investigated under section 39(2) of the PDPO. The present complaint was no exception. The Privacy Commissioner believed that the Appellant's complaint was not made in good faith; and the Appellant had conducted the case in a frivolous and vexatious manner.

Dissatisfied with the Privacy Commissioner's decision, the Appellant lodged an appeal to the AAB.



## 上訴

委員會完全同意私隱專員對上訴人的查閱資料要求的詮釋，即上訴人從未向SL小姐提出有效的查閱資料要求，就此，委員會明確指出上訴本身欠缺事實及法理基礎，根本不能作出合理的論證。

委員會亦考慮了上訴人已就同一事件先後向私隱專員提出多達44宗投訴，而全部皆由於缺乏理據而遭私隱專員以《私隱條例》第39(2)條拒絕繼續進行調查。再者，上訴人對其中3宗（不包括本上訴）向委員會提出上訴（AAB Nos.12/2011、54/2011及74/2011），但全部都被委員會駁回。

故此，委員會認同私隱專員所指本上訴的主要標的事宜並非源於保障個人資料私隱為由，認為上訴人提出的上訴屬瑣屑無聊，亦確信上訴人以瑣屑無聊或無理取鬧的方式處理本上訴，故根據《行政上訴條例》（第442章）第21(1)(k)及22(1)(a)條，判處上訴人須向私隱專員繳付HK\$40,000，作為本上訴中私隱專員所耗用的訟費及費用。

## 行政上訴委員會的決定

委員會駁回本上訴。

*上訴人缺席應訊*

*吳鎧楓高級律師代表私隱專員*

*香港巴哈伊總會（受約束人）缺席應訊*

## The Appeal

The AAB entirely agreed with the Privacy Commissioner's interpretation of the Appellant's entitlement to the DARs, i.e. no DARs had been validly made out by the Appellant vis-à-vis Miss SL. The AAB stressed that the Appellant's complaint against Miss SL lacked both factual and legal bases, and was not capable of reasoned argument.

The AAB also considered that the Appellant had lodged as many as 44 complaints concerning the same Incident; all of which lacked sufficient basis and hence could not be investigated further under section 39(2) of the PDPO. Furthermore, the Appellant had appealed against three out of them (excluding the present appeal) and had all been dismissed by the AAB (AAB Nos.12/2011, No.54/2011 and No.74/2011).

Hence, the AAB agreed with the Privacy Commissioner's conclusion that the subject matter of the present appeal did not arise out of the Appellant's concern for any infringement of this personal data privacy rights. The AAB found that the Appellant was frivolous in lodging the appeal, and conducted the present appeal in a frivolous and vexatious manner. The AAB made an Order that the Appellant pay to the Privacy Commissioner HK\$40,000 being the costs incurred by the Privacy Commissioner in the appeal under sections 21(1)(k) and 22(1)(a) of the Administrative Appeals Board Ordinance (Cap 442).

## The AAB's Decision

The appeal was dismissed.

*The Appellant was absent*

*Mr Dennis NG, Senior Legal Counsel representing the Privacy Commissioner*

*The Spiritual Assembly of the Baha'is of Hong Kong (the Person Bound by the decision) was absent*



### 上訴個案簡述三（行政上訴委員會上訴案件第 4/2019 號）

在內部通訊中僅提述某人的名字並不構成該人的個人資料 – 不存在匯集已被資料使用者識辨或欲藉此識辨有關人士的個人資料 – 不構成 Eastweek 案例中所指的「收集」

聆訊委員會成員：彭耀鴻先生（主席）  
陳詠琪女士（委員）  
錢丞海先生（委員）

裁決日期：2019 年 12 月 4 日

#### 案情

上訴人是一宗在土地審裁處聆訊中的答辯人。上訴人在上述聆訊被判敗訴並欲申請上訴許可。他的上訴許可悉數被土地審裁處及上訴法庭駁回。他曾對上訴法庭拒絕給予上訴許可（讓他可提出司法覆核）的決定提出上訴，而有關的判案書隨後在官方的法律匯報《香港法律匯報與摘錄》（下稱「《匯報與摘錄》」）中匯報。

上訴人認為《匯報與摘錄》中出現的「案件摘錄」並不準確，遂向司法機構投訴。隨後，上訴人發現所有《匯報與摘錄》均由湯森路透香港（「出版商」）的匯報員首先擬備，而出版商在付印前會就所有《匯報與摘錄》內容的準確性尋求司法機構核實。上訴人要求司法機構披露與出版商之間的通訊往來複本（下稱「查閱資料要求」）。司法機構以有關資訊不構成上訴人個人資料為由，拒絕遵從上訴人的查閱資料要求。

#### 私隱專員的決定

私隱專員認為，司法機構和出版商均無意透過通訊往來及/或判案書識辨上訴人。上訴人的個人資料並沒有被匯集，原因是資料使用者並未曾匯集任何關於上訴人作為一名已識辨身分人士之資料，或欲藉此識辨有關人士之資料。因

### Appeal Case Note (3) (AAB Appeal No. 4 of 2019)

Mere reference to an individual's name appearing in internal correspondence does not amount to one's personal data – no compilation of personal data of an identified individual or a person whom the data user seeks to identify – no collection as defined per Eastweek case

Coram : Mr Robert PANG Yiu-hung, S.C. (Chairman)  
Miss Winky CHAN Wing-ki (Member)  
Mr CHIN Shing-hoi (Member)

Date of Decision: 4 December 2019

#### The Complaint

The Appellant was initially the respondent in the proceedings in the Lands Tribunal. He was not successful in the aforesaid proceedings and sought leave to appeal. His leave application was refused both at the Lands Tribunal and the Court of Appeal. He sought to appeal against the decision of the Court of Appeal in refusing to grant leave for him to commence judicial review, and the judgment was subsequently reported in the official law report, the Hong Kong Law Report & Digest ("HKLRD").

The Appellant opined that the headnote that appeared in the HKLRD was inaccurate and complained to the Judiciary. Subsequently, the Appellant discovered that all HKLRD would first be prepared by the reporters of Thomson Reuters Hong Kong ("Publisher"), followed by an approval sought from the Judiciary regarding the accuracy of the content of all HKLRD before publication. Hence, the Appellant made a data access request to the Judiciary demanding it to disclose copies of the correspondence between the Judiciary and the Publisher ("DAR"). The Judiciary refused to comply with the Appellant's DAR on the ground that the material in question did not constitute personal data of the Appellant.

#### The Privacy Commissioner's Decision

The Privacy Commissioner took the view that neither the Judiciary nor the Publisher intended to identify the Appellant by way of the correspondence and/or the reported judgment. There was no compilation of the Appellant's personal data as the data user(s) did not compile any information about the Appellant as an identified individual or about a person whom





此，要求的通訊往來不曾構成上訴人的個人資料及不會受查閱資料要求規限。由於沒有表面證據證明司法機構違反《私隱條例》的任何規定，私隱專員根據《私隱條例》第39(2)(d)條行使酌情權，決定不進一步調查上訴人的投訴。

## 上訴

委員會認同私隱專員的決定，並認為司法機構和出版商之間就匯報判案書的任何通訊往來，均不直接或間接與個人有關；而判案書內所載關於各方的身分並不被視為一項重要的資訊。

委員會引用 *Eastweek Publisher Ltd & Anor v Privacy Commissioner for Personal Data* [2000] 2 HKLRD 83 的案例，並進一步認為《匯報與摘錄》中任何所匯報的案件純粹是法庭的判案書加上撮述該判案書的「案件摘錄」，當中只載有判案書內有關事實撮述、爭議點及法庭的決定。司法機構和出版商之間的通訊往來從不視任何個人的身分為一項重要資訊，重點只是「案件摘錄」的準確程度。

委員會亦引用 *Wu Kit Ping v Administrative Appeals Board* [2007] 4 HKLRD 849 的案例並指出即使通訊往來的確有提述上訴人的姓名，有關的通訊往來也不構成上訴人的個人資料，這是由於沒有任何一方欲確定上訴人的身分。委員會強調任何人在查閱資料要求下的權利僅是獲取他的個人資料的複本，而不是獲取所有曾提述他的所有文件的複本。

## 行政上訴委員會的決定

委員會駁回本上訴。

上訴人親身應訊

黎國榮助理律師代表私隱專員

政府律師莫介邦代表司法機構(受約束人)

the data user(s) intended or sought to identify. Hence, the requested correspondence did not amount to the Appellant's personal data and would not be subject to DAR. Given that there was no *prima facie* evidence of a contravention by the Judiciary, the Privacy Commissioner exercised his discretion under section 39(2)(d) of the PDPO not to further investigate the Appellant's complaint.

## The Appeal

The AAB affirmed the Privacy Commissioner's decision and took the view that any correspondence between the Judiciary and the Publisher concerning the judgment to be reported did not relate directly or indirectly to an individual, in the sense that the identity of the parties in a judgment could not be considered as an important item of information.

The AAB applied the *Eastweek Publisher Limited & Another v Privacy Commissioner for Personal Data* [2000] 2 HKLRD 83 and further opined that any reported case that appeared in the HKLRD was simply the judgment of the Court with an added headnote which summarised the judgment. Correspondence between the Judiciary and the Publisher was not directed towards the identity of the individual as an important item of information, but instead to the correctness of the headnote, which simply summarised the facts, issues and decision of the Court as set out in the judgement.

The AAB also applied the case of *Wu Kit Ping v Administrative Appeals Board* [2007] 4 HKLRD 849 and opined that even if the requested correspondence referred to the Appellant's name, the correspondence did not constitute personal data of the Appellant as none of the parties intended to ascertain his identity. The AAB stressed that a person's entitlement under DAR was to obtain a copy of his data, as opposed to an entitlement to obtain a copy of every document which made a reference to the individual.

## The AAB's Decision

The appeal was dismissed.

*The Appellant appeared in person*

Mr Alex LAI, Assistant Legal Counsel representing the Privacy Commissioner

Mr Gilbert MOK, Government Counsel representing the Judiciary Administrator (the Person bound by the decision)

### 上訴個案簡述四 (行政上訴委員會上訴案件第 7/2019 號)

於公眾走廊安裝閉路電視 – 住宅大廈的保安 – 收集個人資料的用途及方式 – 不公平及超乎適度的收集 – 閉路電視影像的保存期限及保安 – 涉嫌違反保障資料第一及第四原則

聆訊委員會成員：羅沛然博士 (主席)  
袁妙齡女士 (委員)  
伍新華先生 M.H. (委員)

裁決理由書日期：2020 年 2 月 27 日

#### 投訴內容

上訴人投訴其居住大廈的業主立案法團於大廈每層的公眾走廊都安裝了兩部閉路電視。上訴人指其中一部安裝在她居住樓層的閉路電視的位置鄰近她的單位。上訴人指業主立案法團：

- 1) 以不公平及超乎適度的方式收集其個人資料；
- 2) 應以其他方式來達致加強大廈安全及保安的目的；及
- 3) 未有採取充分的措施以防止閉路電視的影像受未經准許的查閱及外洩。

業主立案法團指出安裝閉路電視是因應過往曾發生的案件，故認為應藉此加強保障大廈安全及保安。安裝閉路電視的決定獲業主大會通過，並已於大廈大堂及各樓層公眾走廊的當眼位置貼出告示。閉路電視影像受密碼保護，只有獲授權的人士才可查閱。

### Appeal Case Note (4) (AAB Appeal No. 7 of 2019)

Installation of CCTV in public corridors – security of a residential building – purpose and manner of collection of personal data – unfair and excessive collection – retention and security of CCTV footage – alleged contravention of DPP1 and DPP4

Coram : Dr LO Pui-yin (Chairman)  
Ms Wendy YUEN Miu-ling (Member)  
Mr Lawrence NG San-wa, M.H. (Member)

Date of Decision: 27 February 2020

#### The Complaint

The Appellant complained against the Incorporated Owners of a building (in which she was residing) for installation of two CCTVs in the public corridors of every floor of the building. One of the CCTVs on her storey was located in the proximity of her flat. The Appellant claimed that the Incorporated Owners:-

- 1) collected her personal data in a manner which was unfair and excessive;
- 2) should adopt other means to achieve the purpose of enhancing safety and security of the building; and
- 3) did not adopt sufficient measures to prevent the CCTV footage from unauthorised access and leakage.

The Incorporated Owners stated that the installation of CCTVs was a measure to enhance safety and security of the building after the happening of some criminal incidents. The decision to install CCTVs had been resolved at the owners' meeting and conspicuous notices were displayed at the lobby of the building and in the public corridors of each floor. The CCTV footage was password-protected and could only be accessed by authorised persons.



## 私隱專員的決定

根據上訴法庭於 *Eastweek Publisher Limited & Another v Privacy Commissioner for Personal Data* [2000] 2 HKLRD 83 的案例，私隱專員認為安裝閉路電視系統並不應視作收集上訴人的個人資料。當業主立案法團須觀看閉路電視影像藉以識辨個別人士及搜集有關懷疑罪案的證據或保安事項，便屬收集個人資料。即使在這情況下，由於收集資料的行為與大廈法團執行屋苑的管理工作直接有關，故不會構成以不合法或不公平的方式收集個人資料。再者，經私隱專員的查詢，業主立案法團已發出安裝閉路電視的通告通知受影響的資料當事人，而閉路電視影像的保留期限亦非不合理，並且只有獲授權的人士才可查閱有關的影像。故此，私隱專員認為本案並沒有足夠的表面證據顯示有任何違反條例的規定。

上訴人不滿私隱專員的決定，遂向行政上訴委員會提出上訴。

## 上訴

上訴委員會在考慮各方的陳詞及呈交的證據後，認同私隱專員不繼續調查上訴人所作出的投訴之決定。上訴委員會同意業主立案法團為保安理由安裝閉路電視系統，其意圖並非為了匯集上訴人或其他已被業主立案法團作為資料使用者確定身份的人士的個人資料。雖然上訴委員會認為閉路電視錄取的影像應該被視作有關資料當事人的個人資料，但根據《東周刊》案件，有關的行為並不構成「收集」個人資料，故《私隱條例》並不適用。

## 行政上訴委員會的決定

上訴被駁回。

上訴人親身應訊

黃嘉穎助理律師代表私隱專員

業主立案法團(受約束人)缺席應訊

## The Privacy Commissioner's Decision

Relying on the Court of Appeal's judgment in *Eastweek Publisher Limited & Another v Privacy Commissioner for Personal Data* [2000] 2 HKLRD 83, the Privacy Commissioner took the view that installation of CCTVs should not be regarded as collection of the Appellant's personal data. When the Incorporated Owners had to review the CCTV footage for identifying a person and collecting evidence in case of suspected crimes or security matters, this would involve collection of personal data. In this situation, as the collection was related to the Incorporated Owner's managerial work, it would be unlikely to amount to unlawful or unfair collection. Further, after the Privacy Commissioner's enquiry, the notice of installation of CCTV had been given to the data subjects concerned. It was also noted that retention period of the CCTV footage was not unreasonable and only authorised persons could have access to the CCTV footage. The Privacy Commissioner therefore took the view that there was no *prima facie* evidence of any contravention of the requirements under the PDPO.

Dissatisfied with the Privacy Commissioner's decision, the Appellant lodged an appeal to the AAB.

## The Appeal

Taking into account the parties' submissions and the available evidence, the AAB affirmed the Privacy Commissioner's decision not to proceed with the Appellant's complaint. The AAB agreed that the Incorporated Owners installed the CCTVs for security purpose and its intention was not to compile information about the Appellant or any other identified persons. Whilst the AAB took the view that images captured by the CCTV should be regarded as personal data of the respective data subjects, based on the *Eastweek* case, the act did not constitute collection of personal data. Hence the PDPO had no application.

## The AAB's Decision

The appeal was dismissed.

*The Appellant appeared in person*

*Ms Clara WONG, Assistant Legal Counsel representing the Privacy Commissioner*

*The Incorporated Owners' (the Person bound by the decision) was absent*

## 法律協助計劃

法律協助計劃於2013年4月1日開始。對於因資料使用者違反《私隱條例》規定而蒙受損害，並有意提出法律程序以尋求補償的個人，私隱公署可提供協助。本報告年度內，公署接獲11宗法律協助申請，其中10宗曾於事前向公署作出投訴。

這11宗申請當中共包含以下13項違規指稱：(i)收集個人資料；(ii)個人資料的保留期間；(iii)使用或披露個人資料；及(iv)個人資料的保安。

### 違規指控的性質

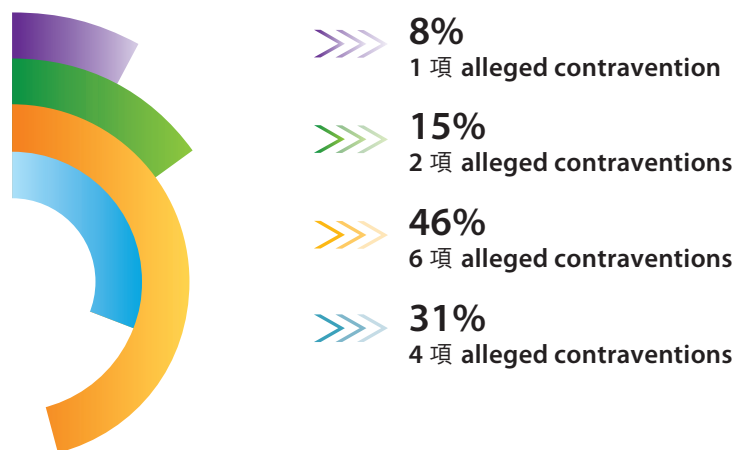
- 保障資料第1原則 - 收集個人資料  
DPP1 - collection of personal data
- 保障資料第2原則 - 個人資料的保留期間  
DPP2 - retention of personal data
- 保障資料第3原則 - 使用或披露個人資料  
DPP3 - use or disclosure of personal data
- 保障資料第4原則 - 個人資料的保安  
DPP4 - security of personal data

## LEGAL ASSISTANCE SCHEME

The Legal Assistance Scheme ("Scheme") commenced on 1 April 2013. Under the Scheme, PCPD may provide assistance to a person who has suffered damage by reason of a contravention under the PDPO and intends to institute proceedings to seek compensation. In the reporting year, PCPD received 11 legal assistance applications, of which 10 cases were preceded by a complaint lodged with PCPD.

These 11 applications involved 13 alleged contraventions of the PDPO in respect of: (i) collection of personal data; (ii) retention of personal data; (iii) the use or disclosure of personal data; and (iv) security of personal data.

### Nature of alleged contraventions in these applications



註：在以上的11宗申請中，其中兩宗個案牽涉多於一項違反保障資料原則的指稱，而以上顯示的百分比是使用違規指控的總數作為計算基準。

N.B.: Two out of 11 applications involved more than one alleged contravention. The percentages shown above are calculated using the total number of alleged contraventions as the base value.



本報告年度內私隱公署處理了16宗申請(包括上一個報告年度未完成的五宗)。在這些申請中，已完成的申請有14宗，其餘兩宗申請在年結時仍在考慮中。

在已完成的14宗審批個案中，一宗由申請人撤回、一宗獲給予法律協助及12宗被拒。申請被拒的主要因為不涉及法律原則及申請人未能舉出證據證明蒙受損害。

另外，私隱公署在本報告年度內接獲三個覆核拒絕給予法律協助決定的要求，公署已完成覆檢並維持該決定。

During the reporting year, PCPD handled 16 applications (including five brought forward from last year). Of these applications, 14 applications were completed and two applications were still under consideration as at the end of the reporting period.

Of the 14 applications completed, one was withdrawn by the applicant, one was granted legal assistance and 12 were refused. The main reasons for refusing applications were the absence of an issue concerning a legal principle as well as the applicant's failure to provide evidence to substantiate any damage suffered.

Three requests for review of refusal were received during the reporting year. Upon review, PCPD decided to maintain the decision to refuse the applications.